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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/612,521

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Cheryl E. Zemont

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EXAMINER

BROWN, MICHAEL A

ART UNIT

PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/612,521
Filing Date: July 02, 2003
Appellant(s): ZEMONT, CHERYL E.

MAILED

JUL 13 2006

Group 3700

Gavin J. Milczarek-Desai
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 2, 2006 appealing from the Office action mailed January 9, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

744,718	CASSIDY	11-1903
EP 0,320,958	MAUCH	12-1988
6,013,042	SAKAI	1-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-5, 13-14, 16-17 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassidy in view of Mauch EP '985, along with Sakai.

(10) Response to Argument

Appellant argues that the prior art doesn't disclose a trigger therapy device or a method of trigger point therapy. However, Cassidy discloses what can be interpreted as a trigger therapy device because the nodes are used to massage the muscles and the nerves in the muscles. The muscles include any trigger point. Appellant argues that none of the prior art discloses a spherical ball having an array of between 8 and 14 pliable nodes. Moreover the prior art doesn't disclose the nodes having the same length and diameter recited in the claims. Clearly Cassidy discloses a spherical ball (A), having pliable nodes (a). There are more than 14 nodes on the ball discloses by Cassidy. Thus, there is an array on the spherical ball that includes between 8 to 14 nodes. As for the length and diameter of the nodes, Sakai provides a teaching to construct the nodes of the same length (between ½ to 1 inch) and the diameter (between ½ inch to 1 inch), recited in the claims of the present invention. Appellant argues that the restricted number of nodes and the spacing of the nodes are due to roll and pressure requirements. Moreover the number and size of the nodes dictates the

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spacing between the nodes and the degree of penetration into the body when pressure is applied. Cassidy discloses an array that includes between 8 to 14 nodes. Cassidy also teaches that the nodes can be arranged at any desire distance from each other (page 1, col. 1, lines 43-45) and in any suitable arrangement (which includes an array of 8 to 14 nodes). Thus, providing a teaching for restricting the number of nodes and the spacing between the nodes. Appellant argues that Sakai or the prior art doesn't provide a motivation to form the node of the length and diameter recited in the claims.

However, Sakai provides a teaching of forming the nodes of the same length and diameter recited in the claims. Sakai was used as a modifier to provide motivation for forming the nodes of the same diameter and length as recited in the claims. Appellant argues that the prior art doesn't disclose applying localized pressure to trigger points. However, as set forth above, Cassidy disclose using the spherical ball and nodes to massage the muscles (which can include a sore muscles, a trigger point) and the nerves in the muscles. The examiner is interpreting massaging the muscles as applying localized pressure to a trigger point.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees:

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Angela Sykes

Jerome Donnelly



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